

DAVID G. MANGUM (4085)
C. KEVIN SPEIRS (5350)
KRISTINE EDDE JOHNSON (7190)
MICHAEL R. MCCARTHY (8850)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 532-1234
Facsimile: (801) 536-6111
ecf@parsonsbehle.com

BENJAMIN G. JACKSON (Cal Bar. No. 255358)
(*pro hac vice* motion to be filed)
MATTHEW GORDON (12526)
MYRIAD GENETICS, INC.
320 Wakara Way
Salt Lake City, UT 84108
Telephone: (801) 584-3600
Facsimile: (801) 584-3640
bjackson@myriad.com
mgordon@myriad.com

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

UNIVERSITY OF UTAH RESEARCH
FOUNDATION, a division of the University
of Utah, a Utah nonprofit corporation;
TRUSTEES OF THE UNIVERSITY OF
PENNSYLVANIA, a Pennsylvania
nonprofit corporation; HSC RESEARCH
AND DEVELOPMENT LIMITED
PARTNERSHIP, a Canadian limited
partnership organized under the laws of the
Province of Ontario; ENDORECHERCHE,
INC., a Canadian corporation organized
under the laws of the Province of Quebec,
and MYRIAD GENETICS, INC., a
Delaware corporation,

Plaintiffs,

**SECOND DECLARATION OF
ALEXANDER FORD**

Case No. 2:13-cv-00640-RJS

Judge Robert J. Shelby

vs.

AMBRY GENETICS CORPORATION,

Defendant.

I, Alexander Ford, declare:

1. I am currently employed as the Chief Commercial Officer of Myriad Genetic Laboratories, Inc., a wholly-owned subsidiary of Myriad Genetics, Inc. Myriad Genetic Laboratories, Inc. conducts all of the clinical diagnostic testing on behalf of the Myriad affiliated group. Among other things, I have oversight responsibility for sales and marketing of Myriad's BRACAnalysis® genetic testing. In that role, I have access to information regarding the system of public and private insurance reimbursement for patients receiving BRACAnalysis® testing.

2. As part of its \$500 million investment in developing BRACAnalysis® testing and the market for molecular diagnostic testing, Myriad developed a market of insurance reimbursement for such testing both with private payors (insurance and similar companies) and Medicare and Medicaid reimbursement.

3. Medicare beneficiaries nationwide who meet medical criteria have had access to BRACAnalysis® testing with no out-of-pocket expense since 2004. Fee-for-service and managed Medicaid beneficiaries in the majority of states likewise receive BRACAnalysis® testing with no to very low out-of-pocket expense.

4. Myriad has secured and maintained in-network contracts with more than 530 private payors, ensuring patients have the lowest possible out-of-pocket expense. As a result, greater than 99% of BRACAnalysis® tests ordered have some insurance reimbursement. Currently, approximately 80% of patients who received BRACAnalysis® testing paid nothing.

Furthermore, the average out of pocket cost is less than \$100. For individuals who still cannot afford the testing, Myriad has also implemented four patient assistance programs that provide qualified individuals access to BRAC*Analysis*® testing. First, patients who meet clinical criteria without insurance and under a prescribed income level receive such testing free of charge. Second, for qualifying low-income patients with insurance, Myriad has a program to limit out of pocket costs to \$375. Third, for any patient, Myriad offers interest-free financing programs to tailor payment plans for out-of-pocket costs to ensure they are affordable for the patient. Last, Myriad donates money and conducts discounted testing for charitable organizations that are designed to assist patients with out of pocket costs. Over the past 5 years more than 35,000 patients have received some form of financial assistance from Myriad.

5. While it has a list price below that of Myriad's test, Ambry's BRCAPlus test still costs \$2,280. Without a large number of in-network insurance contracts, as Myriad has secured, it is likely that patient out-of-pocket costs will be higher for Ambry's out-of-network test.

6. Myriad does not and has not asserted its patents against anyone that performs "second opinion" testing. In 2002, Myriad licensed LabCorp, the second largest reference laboratory in the country, to perform such testing. According to the Genetic Testing Registry maintained by the National Center for Biotechnology Information (available at <http://www.ncbi.nlm.nih.gov/gtr/>), second opinion testing is currently available from at least one institution: the University of Chicago Genetic Services Laboratory apparently offers testing for "known familial mutations" (see <http://www.ncbi.nlm.nih.gov/gtr/tests/23657/#methodology>). Finally, Myriad has publicly announced that "Myriad will continue its practice of not interfering with laboratories conducting genetic testing on patients for the purpose of confirming a test result provided by Myriad."

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23rd day of July, 2013.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

ALEXANDER FORD

CERTIFICATE OF SERVICE

On this 24th day of July 2013, I hereby certify that I electronically filed the foregoing

SECOND DECLARATION OF ALEXANDER FORD with the Clerk of Court using the

CM/ECF system which automatically sent email notification of such filing to all counsel who

have entered an appearance in this action.

/s/ David G. Mangum